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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,616	10/19/2006	Nathalie Bergeret	0549-1018	5414

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YOUNG & THOMPSON
209 Madison Street
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Alexandria, VA 22314

EXAMINER

BODAWALA, DIMPLE N

ART UNIT	PAPER NUMBER
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1791

NOTIFICATION DATE	DELIVERY MODE
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09/24/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/581,616	Applicant(s) BERGERET, NATHALIE	
	Examiner DIMPLE N. BODAWALA	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-43,45-53,56 and 57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-43,45-53,56 and 57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on **9/3/2010** has been entered.

New Ground of Rejection

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 38-43, 45-51, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over RADE (US 1,531,569) in view of either Liorente Hompanera (US 2001/0043977, previously recorded) or Sollich (GB 697,071, previously recorded).

4. As to claims 38, 57, RADE ('569) discloses one-piece construction of hollow piece of cake pan as a mould which surrounds a removable rigid plate-shaped base stiffener (13) (See Page 1, lines 57-61; fig. 1); and an annular continuous upright sidewall (10) and lower portion (not labeled but see figure 1 at bottom plate (13)), wherein the lower portion comprising an inturned flange (12) at its lower edge of the upright sidewall (See Page 1, lines 55-56), thus, such configuration enable to define lower lip as claimed, wherein lower lip (12) is involved to hold the bottom plate (13) and defining with the plate shaped base stiffener a bottom wall of the mold (See figure 1). Figure 1 further shows that the lower portion of the upright sidewall (10) further comprises stud (15) as an upper lip projecting from the lower base of the upright sidewall, extending above the lower lip (12), defining with the lower lip (12) a radially opened groove in which the

plate-shaped base stiffener is removably received and pinning the plate shaped base stiffener (13) against the lower lip (12) (See page 1 lines 63-69).

5. RADE ('569) further teaches that the mold is related to cooking utensil, but fails to teach or suggest that the material to be used to make hollow piece of the pie pan or mold as cited in claims.

6. Liorente Hompanera ('977) discloses use of silicone for manufacturing a confectionery moulds and baking receptacle, wherein the cooking pan is made of flexible elastomeric material such as silicone, wherein silicone material is a heat curable elastomer (See paragraph # 11, 13 and 14), which is intended for application in contact with food stuff. It further involved for the operation of easily removal of the baked product from the mold (See abstract), and the operation of easily washed of mold or receptacle. Furthermore, silicone having a high flexibility which is involved to make a mold or receptacle with desire shape and size to suit user requirement (See para. # 13).

7. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **RADE ('569)** by providing a flexible elastomeric material such as silicone material for pan rather than a rigid material because such flexible elastomeric material is involved for the operation of easily removal of the baked product from the mold (See abstract), and the operation of easily washed of mold or receptacle, further involved to make a mold or receptacle with desire shape and size to suit user requirement (See paragraph # 13), and silicone material is a heat curable elastomer (See paragraph # 11, 13 and 14), which is intended for application in contact with food stuff as suggested by **Liorente Hompanera ('977)**.

8. Sollich discloses flexible mold which is made of rubber, wherein mold comprises bottom portion for receiving metal reinforcement member to give the desired rigidity (See page 1).

9. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **RADE ('569)** by modifying the mold

with a flexible elastomeric material of **Sollich** because such material is a heat curable elastomer which is intended for application in contact with food stuff and other properties of material is intended for the operation of easily removal of the baked product from the mold, and the operation of easily washed of mold; and also such material is non-deformable material so the casting mold body or mold profile with rim and bottom portion both of which retain their shape during different applications.

10. As to claims 39-40, RADE ('569) further teaches that the lower base of the side wall (10) is formed integrally with the lower lip (12), wherein the lower lip (12) is a continuous lip (See figure 1).

11. As to claims 41-43, Figure 1 of RADE ('569) further shows that the lower lip (12) is a lower ring-shaped wall limited towards the center of the bottom wall by a hole that is covered by the plate shaped base stiffener (13). Figure 1 of RADE ('569) further shows that the lower ring-shaped wall occupies some area of the total surface area of the bottom wall of the mould, but fails to provide ranges as cited in claims 42-43. So, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **RADE ('569)** by optimizing range of the total surface area of the plate shaped base stiffener covered by the lower ring shaped wall, wherein such configuration of the mould allowed the user to slide and/or clip the plate shaped base stiffener easily on the lower ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications.

12. As to claims 45-47, RADE ('569) further teaches that the length of the extension of the lower lip from the lower base of the side wall and the length of the upper lip (See figure 1), but fails to provide ratio between these two lengths. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **RADE ('569)** by optimizing ratio of the length of the extension of the lower bead from the lower base of the side wall to the length of the upper bead in desired range and/or as cited in the claim, in order to define dimension of lower ring shaped wall, so the

user enable to slide and/or clip the plate shaped base stiffener easily on the lower ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications.

13. As to claim 48, RADE ('569) further teaches that the mould comprises an upper lip is a continuous lip (See figures 1-2).

14. As to claims 49-51, RADE ('569) discloses mould having a lower portion which define an upper lip (15), wherein upper lip having a single segment (See figure 1-2), but fails to teach or suggest that upper lip having several segments as cited in claims of the instant application. So it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the segment of upper lip of lower portion of hollow piece mould of **RADE ('569)**, in order to define a lower ring-shaped wall with varied thickness, which could be used to retain the rigid plate shaped base stiffener during the various applications. It has been held that a mere change in shape without affecting the functioning of the part would have been within the level of ordinary skill in the art, *In re Dailey et al.*, 149 USPQ 47; *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23

15. As to claim 56, RADE ('569) further teaches that the plate shaped base stiffener (13) is clipped into the groove (See figure 1).

16. Claims 38-43, 45-53, 56 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over TROCKELS et al. (DE 42 22 676 A1, cited by Applicant on PTOL-1449 form submitted on 6/5/2006) in view of Liotto et al. (US 4,644,858).

17. As to claims 38 and 57, TROCKELS et al. ('676) discloses one-piece construction of hollow piece of baking pan (See figure 1) is made from an elastomer material, such as, silicone rubber or TEFLON (See translation), wherein such flexible baking pan surrounds the removable plate shaped base (3) (See figure 1; abstract), wherein the base plate (3) is made of metal and coated with elastomer material, such as, silicon, PTFE (See abstract), thus, the base plate (3) may be used as a rigid plate-shaped base stiffener as claimed. It further teaches that the baking pan further comprises an annular continuous upright

sidewall (4), and lower portion of the sidewall (4) comprising a support element (5) as lower lip projecting from a lower base of the upright sidewall (4), wherein the lower lip (5) could be circular or rectangular shape (See abstract; and translation) for holding the rigid plate shaped base stiffener (3) and defining with the plate shaped base stiffener a bottom wall of the mold. It further teaches that the plate-shaped base stiffener (3) is placed onto the support element (5) (See figure 1). It further teaches that the side edge is preferred a bottom obtuse angle opposite the support means angled, thus, a problem free insertion and removal of a base plate become from an edge element ensured (See translation), wherein such statement indicates that the configuration of lower portion of the sidewall of the container might be varied, in order to easily remove or insert the base plate.

18. TROCKEL et al. ('676) discloses a baking pan having a support element (or lower lip) (5) may be continuous at the lower portion of the side wall (4) and involved to support base plate (3) as discussed above. It further teaches that the side edge is provided with a detention; and the support element formed with advantage continuous and forms a circumferential surface which sets a base plate at the lower end of the sidewall (See translation), but fails to teach or suggest that the lower portion of the sidewall comprises an upper lip extending from the lower lip as claimed.

19. As to claim 38, **Liotto et al. ('858)** discloses a backing pan assembly as a mould for culinary preparation, wherein mould comprises a cylindrical shell (11) as a hollow piece is made from suitable synthetic plastic material such as polycarbonate, POLYLITE (or polyester resin) having high heat resistance and good physical properties (See col.4 lines 31-40). It further teaches that the mould comprises a circular base (10) having good structural strength (See col.4 lines 28-29), which suggests that the material of the base is rigid and removable (See figure 2). It further teaches that the hollow piece (11) having an upright side wall with a lower base (12) which is connected to the lower portion (11D) of the hollow piece (11), wherein the lower portion (11D) comprising a lower lip (13) for

holding the removable rigid plate-shaped base stiffener (10) and define a bottom wall of the mould (See figure 1). It further teaches that the mould comprises an upper lip (see at reference 12) extending above the lower lip (13), defining with the lower lip a groove in which the plate-shaped base stiffener is removably received (See figure 4), and pinning the plate-shaped base stiffener against the lower lip (See figure 4).

20. As to claims 39-40, **Liotto et al.** further teaches that the lower base of the side wall is formed integrally with the lower lip (See figures 2 and 4), wherein the lower lip (13) is a continuous lip (See figures 2 and 4).

21. As to claims 41-43, **Liotto et al.** further teaches that the lower lip is a lower ring-shaped wall limited toward the center of the bottom wall by a hole that is covered by the plate-shaped base stiffener (10) (See figure 4). Figure 4 further shows that the lower ring-shaped wall occupies some area of the total surface area of the bottom wall of the mould, but fails to provide the range as cited in claims. So, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Liotto et al.** by optimizing range of the total surface area of the plate shaped base stiffener covered by the lower ring shaped wall, wherein such configuration of the mould allowed the user to slide and/or clip the plate shaped base stiffener easily on the lower ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications. Claimed range and the prior art range of composition are closed enough to demonstrate similar properties and be expected to have a standard results, *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).

22. As to claims 45-47, **Liotto et al.** further teaches that the length of the extension of the lower lip from the lower base of the side wall and the length of the upper lip (See figure 2), but fails to provide ratio between these two lengths. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the invention of **Liotto et al.** by optimizing ratio of the length of the extension of the lower

bead from the lower base of the side wall to the length of the upper bead in desired range and/or as cited in the claim, in order to define dimension of lower ring shaped wall, so the user enable to slide and/or clip the plate shaped base stiffener easily on the lower ring-shaped wall, and, thus, lower ring-shaped wall retains the plate shaped base stiffener during the various applications. It is not necessary that the prior art suggests expressly or in so many words the changes or possible improvements the inventor made but that the knowledge is clearly present. *In re Sernaker*, 217 USPQ 1 (Fed. Cir. 1983).

23. As to claims 48-50, Figure 2 of **Liotto et al.** further shows that the upper lip (12) is a continuous lip, wherein upper lip comprises suitable segment defining with the lower ring-shaped wall a discontinuous groove (See figure 4), but fails to teach or suggest that upper lip having several segments as cited in claims of the instant application. So it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the segment of upper lip of lower portion of hollow piece mould of **Liotto et al.**, in order to define a lower ring-shaped wall with varied thickness, wherein such configuration of the mould enable to retain the rigid plate shaped base stiffener during the various applications. It has been held that a mere change in shape without affecting the functioning of the part would have been within the level of ordinary skill in the art, *In re Dailey et al.*, 149 USPQ 47; *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23.

24. As to claim 51, figure 4 of **Liotto et al.** further shows that the lower ring shaped wall having higher thickness near upper lip, thus suggests that the lower ring-shaped wall displays variation in thickness.

25. As to claims 52-53, **Liotto et al.** further teaches that the lower ring-shaped wall has a lower surface which is substantially flat and upper surface presenting a shouldering making it thicker in a peripheral part that is close to the lower base of the side wall than in a central part that is close to the hole, the plate shaped base stiffener having an annular step in order to approximately follow the upper surface of the lower ring shaped wall on

which it is disposed (See figure 4), wherein the lower surface comprises a flange at the external perimeter thereof (See figure 4).

26. As to claim 56, figure 4 of **Liotto et al.** further shows that the plate shaped based stiffener is clipped into the groove.

27. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the configuration of the lower end of the sidewall of baking pan of **TROCKELS et al. ('676)** by providing upper lip extending above the lower lip, in order to define a radially opened groove which could be used for receiving and supporting rigid plate shaped base stiffener, in order to form a leakproof seal between hollow piece and base (See col.3 lines 40-43); and also the hollow piece may be detached easily from the base to expose the food product without disrupting its structure (See col.2 lines 65-67) as taught by **Liotto et al. ('858)**.

Response to Arguments

28. For combination rejection of claims over **Henderson (US 2,033,574) in view of Llorente Hompanera (US 2001/0043977) or Sollich (GB 697,071)**, wherein Applicant argues that **Henderson** discloses a rigid mold in two parts: a plate shaped base (15) and a hollow piece having lateral wall (10) with an annular groove (13) with an upward opening, wherein the groove is delimited by an outer vertical wall extending the lateral wall, a bottom wall extending outer vertical wall, an inner vertical wall extending the bottom wall, and an horizontal flange (14) extending from the free end of the inner vertical wall toward the outer vertical wall, thus, the groove (13) is not radially opened and what is considered by the official action as an upper lip (or flange (14)) is not projecting from the lower base of the upright sidewall of the hollow piece. Applicant further argues that neither **Llorente Hompanera** nor **Sollich** would have provided the skilled artisan with any apparent reason to modify the orientation of the opening of the annular groove of **Henderson**, in which the plate (15) is held by groove, and the removable rigid plate may be fixed to the rigid lateral wall only because of orientation of

the groove. For combination rejection of claims over **Liotto (US 4,644,858) in view of Llorente Hompanera (US 2001/0043977) or Sollich (GB 697,071)**, wherein Applicant argues that **Liotto** discloses a rigid mold having an upright sidewall made of two parts articulated to each other by a vertical hinge, thus, **Liotto** does not disclose a mold wall in only one part. Applicant further argues that neither **Llorente Hompanera** nor **Sollich** would have provided the skilled artisan with any apparent reason to replace the upright sidewall in two hinged parts of **Liotto** by an upright sidewall with a single part without removing the upper lip.

29. Applicant's arguments as discussed above have been considered but are moot in view of the new ground(s) of rejection as discussed above.

Conclusion

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (See PTOL-892).

31. **COLATO (US 3,374,936)** discloses a mould having an annular continuous upright sidewall (12); and lower portion of the sidewall (12) comprises lug (20) as an upper lip and flange (14) as a lower lip for supporting bottom plate (16) (See figure 4).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIMPLE N. BODAWALA whose telephone number is (571)272-6455. The examiner can normally be reached on Monday - Friday at 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PHILLIP C. TUCKER can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. N. B./
Examiner, Art Unit 1791

/Philip C Tucker/
Supervisory Patent Examiner, Art Unit 1791